

AGENDA
Paralegal Practitioner Steering Committee
 August 16, 2018
 12:00 p.m. – 2:00 p.m.
 Scott M. Matheson Courthouse
 Executive Dining Room, Room W18A
 450 S. State St.
 Salt Lake City, UT. 84111

Welcome ACTION – Approval of draft June 21, 2018 meeting minutes	Tab 1	Justice Himonas
DISCUSSION – RGLPP 15-701(p) and Section 78B-6-801, forcible entry and detainer versus unlawful detainer matters	Tab 2	Cathy Dupont
DISCUSSION – Need for a court approved debt collection settlement agreement		Carrie Boren
UPDATE – Utah State Bar Conference presentation on the LPP program and upcoming presentation to paralegals on the LPP program		Julie Emery
UPDATE – LPP test development and the memorandum of understanding with Utah Valley University		Carrie Boren and Elizabeth Wright
UPDATE - Preparation of Rules for Publication and Amending Rules of Evidence and URCP		Cathy Dupont
Other Business		

Members

Justice Deno Himonas, Chair
 John Baldwin
 Adam Caldwell
 Dr. Tom Clarke
 Terry Conaway
 Sue Crismon
 James Deans
 Cathy Dupont
 Julie Emery

Judge Royal Hansen
 Dixie Jackson
 James S. Jardine
 Scott Jensen
 Steven G. Johnson
 Comm. Kim M. Luhn
 Ellen Maycock
 Dean Robert Adler
 Daniel O'Bannon

Robert O. Rice
 Rick Schwermer
 Monte Sleight
 Gayla Sorenson
 Judge Kate Toomey
 Steve Urquhart
 Elizabeth Wright

Tab 1

**PARALEGAL PRACTITIONER
STEERING COMMITTEE
MEETING**

**Minutes
June 21, 2018
Council Room
Matheson Courthouse
450 S. State St.
Salt Lake City, Utah 84111
12:00 p.m. – 2:00 p.m.**

Justice Deno Himonas, Presiding

Attendees:

Justice Deno Himonas, Chair
John Baldwin
Carrie Boren
Sue Crismon
James Deans
Julie Emery
Dixie Jackson
Steven Johnson
Commissioner Kim Luhn
Ellen Maycock
Jacqueline Esty Morrison
Daniel O'Bannon
Rob Rice
Monte Sleight
Judge Kate Toomey
Elizabeth Wright

Excused:

Dean Robert Adler
Adam Caldwell
Dr. Thomas Clarke
Terry Conaway
Dean Benson Dastrup
Cathy Dupont
Judge Royal Hansen
Jim Jardine
Scott Jensen
Richard Schwermer
Senator Stephen Urquhart

Staff:

Jeni Wood – Recording secretary

Guests:

1. WELCOME AND APPROVAL OF MINUTES: (Justice Deno Himonas)

Justice Deno Himonas welcomed everyone to the meeting.

Motion: Judge Kate Toomey moved to approve the May 22, 2018 committee minutes, as amended. Sue Crismon seconded the motion, and it passed unanimously.

2. REVIEW FINAL RULES AND SELECT EFFECTIVE DATE: (Justice Deno Himonas)

Justice Himonas noted rules are typically effective either May 1 or November 1, with exceptions. After brief discussion, the committee determined November 1 would work for final approval of the rules. Rules are: 14-403; 14-802; 15-301; 15-401; 15-402; 15-404; 15-405; 15-

406; 15-408; 15-409; 15-410; 15-411; 15-412; 15-413; 15-414; 15-415; 15-416; 15-501; 15-502; 15-503; 15-504; 15-506; 15-508; 15-509; 15-510; 15-511; 15-512; 15-513; 15-514; 15-515; 15-516; 15-517; 15-518; 15-519; 15-520; 15-522; 15-523; 15-524; 15-525; 15-526; 15-527; 15-528; 15-529; 15-530; 15-531; 15-532; 15-533; 15-601; 15-602; 15-603; 15-604; 15-605; 15-606; 15-607; 15-701; 15-702; 15-703; 15-705; 15-706; 15-707; 15-708; 15-709; 15-710; 15-711; 15-713; 15-715; 15-716; 15-717; 15-720; 15-901; 15-902; 15-903; 15-904; 15-905; 15-906; 15-907; 15-908; 15-909; 15-910; 15-911; 15-912; 15-913; 15-914; 15-915; 15-916; 15-1001; 15-1101; 15-1102; 15-1103; 15-1104; 15-1105; 15-1106; 15-1107; 15-1108; 15-1109; 15-1110; 15-1111; 15-1112; 15-1113; 15-1114; 15-1115; 15-1116; 15-1117; 15-1118; 15-1119; 15-1120; Preamble; 15-1200; 15-1201; 15-1202; 15-1203; 15-1204; 15-1205; 15-1206; 15-1207; 15-1208; 15-1209; 15-1210; 15-1211; 15-1212; 15-1213; 15-1214; 15-1215; 15-1216; 15-1217; 15-1218; 15-1219; 15-1221; 15-1223; 15-1225; 15-1226; 15-1227; 15-1232; 15-1233; 15-1234; 15-1236; 15-1237; 15-1238; 15-1239; 15-1240; 15-1242; 15-1244; 15-1245; 15-1246; 15-1247; 15-1248; 15-1249; 15-1250; 15-1251; 15-1253; 15-1254; 15-1255; 15-1256; and 15-1257.

3. AMEND RULE 15-703: (Julie Emery)

Julie Emery distributed a revision to rule 15-703. Ms. Emery noted two of the three national tests were recently revised. There was discussion on this rule.

Motion: Elizabeth Wright moved to approve rule 15-703 with corrections on lines 17 and 33-37. Judge Toomey seconded the motion, and it passed unanimously.

4. COORDINATION WITH UTAH VALLEY UNIVERSITY: (Elizabeth Wright, Jacqueline Esty Morrison, Julie Emery, and Carrie Boren)

Ms. Wright said the contract has been created and reviewed, however, there are some changes that need to be addressed.

5. LPP SUPERVISION LIMITS: (Julie Emery)

Monte Sleight said the rules require supervision of an LPP by an attorney. Justice Himonas said the national center recommends lowering barriers, such as allowing an LPP to be supervised by someone other than an attorney. Ms. Wright said rules will need to be amended clarifying supervisory roles. Ms. Wright will work on the rules and return to the next LPP executive meeting with drafts.

6. URCP AND RULES OF EVIDENCE: (Justice Deno Himonas)

Justice Himonas explained the Rules of Appellate Procedure, Rules of Evidence, Rules of Civil Procedures, and Small Claims Rules need to be reviewed. Judge Toomey, Commissioner Kim Luhn, and Carrie Boren will review the rules and report at the next meeting. Steve Johnson said the Rules of Professional Conduct Committee should review the LPP rules for potential issues.

7. OTHER BUSINESS

Ms. Emery distributed and discussed a checklist. Ms. Emery, Rob Rice, Ms. Wright, and Jacqueline Morrison will propose a rule for the committee. Ms. Emery said there should be information on websites that address how to obtain training/volunteer.

Ms. Emery said Cathy Dupont, Carrie Boren, and Jim Hunnicut will present about the LPP program at the Bar's summer convention.

Ms. Emery said larger firms are reviewing the possibility of utilizing LPPs.

8. ADJOURN

The meeting was adjourned.

Tab 2

1 Rule 15-701. Definitions.

2 As used in this article:

3 (a) "ABA" means the American Bar Association.

4 (b) "Accredited School" means a school officially recognized as meeting the standards and
5 requirements of a regional or national accrediting organization that is approved by the U.S.
6 Department of Education.

7 (c) "Applicant" means each person requesting licensure as a Licensed Paralegal Practitioner.

8 (d) "Approved Law School" means a law school which is fully or provisionally approved by
9 the ABA pursuant to its Standards and Rules of Procedure for Approval of Law Schools. To
10 qualify as approved, the law school must have been fully or provisionally approved at the time of
11 the Applicant's graduation, or at the time of the Applicant's enrollment, provided that the
12 Applicant graduated within a typical and reasonable period of time.

13 (e) "Associate Degree" means an undergraduate academic degree conferred by a college
14 upon completion of the curriculum required for an associate degree.

15 (f) "Bachelor's Degree" means an academic degree conferred by a college or university
16 upon completion of the undergraduate curriculum.

17 (g) "Bar" means the Utah State Bar, including its employees, committees and the Board.

18 (h) "Board" means the Board of Bar Commissioners.

19 (i) "Complete Application" means an application that includes all fees and necessary
20 application forms, along with any required supporting documentation, character references, a
21 criminal background check, a photo, an official certificate of graduation and if applicable, a test
22 accommodation request with supporting medical documentation.

23 (j) "Confidential Information" is defined in Rule 15-720(a).

24 (k) "Disbarred Lawyer" means an individual who was once a licensed lawyer and is no
25 longer permitted to practice law.

26 (l) "Executive Director" means the executive director of the Utah State Bar or her or his
27 designee.

28 (m) "First Professional Degree" means a degree that prepares the holder for admission to the
29 practice of law (e.g. juris doctorate) by emphasizing competency skills along with theory and
30 analysis. An advanced, focused, or honorary degree in law is not recognized as a First
31 Professional Degree (e.g. master of laws or doctor of laws).

32 (n) "Full-time" means providing legal services as a paralegal for no fewer than 80 hours per
33 month.

34 (o) "General Counsel" means the General Counsel of the Utah State Bar or her or his
35 designee.

36 (p) "Licensed Paralegal Practitioner" means a person licensed by the Utah Supreme Court to
37 provide limited legal representation in the areas of (1) temporary separation, divorce, parentage,
38 cohabitant abuse, civil stalking, custody and support, and name change; (2) forcible entry and
39 detainer; or (3) debt collection matters in which the dollar amount in issue does not exceed the
40 statutory limit for small claims cases.

41 (q) "LPP" means Licensed Paralegal Practitioner.

42 (r) "LPP Administrator" means the Bar employee in charge of LPP licensure or his or her
43 designee.

44 (s) "LPP Admissions Committee" means those Utah State Bar members or others appointed
45 by the Board or president of the Bar who are charged with recommending standards and
46 procedures for licensure of LPPs, with implementation of this article, reviewing requests for test
47 accommodations, and assessing the qualifications of applicants

48 (t) "NALA" means the National Association of Legal Assistants.

49 (u) "NALS" means The Association for Legal Professionals.

50 (v) "OPC" means the Bar's Office of Professional Conduct.

51 (w) "Paralegal" means a person qualified through education, training, or work experience,
52 who is employed or retained by a lawyer, law office, governmental agency, or the entity in the
53 capacity or function which involves the performance, under the ultimate direction and
54 supervision of an attorney, of specifically delegated substantive legal work, which work, for the
55 most part, requires a sufficient knowledge of legal concepts that absent such assistance, the
56 attorney would perform.

57 (x) "Paralegal Certificate" means verification that an individual has successfully completed
58 an accredited paralegal education program.

59 (y) "Paralegal Studies and Paralegal Studies Degree" mean course work that prepares a
60 holder to work as a paralegal.

61 (z) "Privileged Information" in this article includes: information subject to the attorney-client
62 privilege, attorney work product, test materials and applications of examinees; correspondence

63 and written decisions of the Board and LPP Admissions Committee, and the identity of
64 individuals participating in the drafting, reviewing, grading and scoring of the LPP Licensure
65 Examination.

66 (aa) “Reapplication for Licensure” means that for two years after the filing of an
67 original application, an Applicant may reapply by completing a Reapplication for Licensure form
68 updating any information that has changed since the prior application was filed and submitting a
69 new criminal background check.

70 (bb) “Substantive Law-Related Experience” means the provision of legal services as a
71 Paralegal, paralegal student or law student including, but not limited to, drafting pleadings, legal
72 documents or correspondence, completing forms, preparing reports or charts, legal research, and
73 interviewing clients or witnesses. Substantive Law-Related Experience does not include routine
74 clerical or administrative duties. Substantive Law-Related Experience for licensure in landlord-
75 tenant and debt collection includes, but is not limited to, the provision of legal services as a
76 Paralegal supervised by a licensed attorney, paralegal student or law student in the areas of
77 bankruptcy, real estate, mortgage and/or banking law.

78 (cc) "Supreme Court" means the Utah Supreme Court.

79 (dd) “Unapproved Law School” means a law school that is not fully or provisionally
80 approved by the ABA.

81 (ee) "Updated Application" means that an Applicant is required to amend and update
82 her or his application on an ongoing basis and correct any information that has changed since the
83 application was filed.

1 **Rule 14-802. Authorization to practice law.**

2 (a) Except as set forth in subsections (c) and (d) of this rule, only persons who are active,
3 licensed members of the Bar in good standing may engage in the practice of law in Utah.

4 (b) For purposes of this rule:

5 (b)(1) The “practice of law” is the representation of the interests of another person by informing,
6 counseling, advising, assisting, advocating for or drafting documents for that person through
7 application of the law and associated legal principles to that person’s facts and circumstances.

8 (b)(2) The “law” is the collective body of declarations by governmental authorities that establish
9 a person’s rights, duties, constraints and freedoms and consists primarily of:

10 (b)(2)(A) constitutional provisions, treaties, statutes, ordinances, rules, regulations and similarly
11 enacted declarations; and

12 (b)(2)(B) decisions, orders and deliberations of adjudicative, legislative and executive bodies of
13 government that have authority to interpret, prescribe and determine a person’s rights, duties,
14 constraints and freedoms.

15 (b)(3) “Person” includes the plural as well as the singular and legal entities as well as natural
16 persons.

17 (c) Exceptions and Exclusions for Licensed Paralegal Practitioners. A person may be licensed to
18 engage in the limited practice of law in the area or areas of (1) temporary separation, divorce,
19 parentage, cohabitant abuse, civil stalking, custody and support, and name change; (2) forcible
20 entry and detainer; or (3) debt collection matters in which the dollar amount in issue does not
21 exceed the statutory limit for small claims cases.

22 (c)(1)(A) Within a practice area or areas in which a Licensed Paralegal Practitioner is licensed, a
23 Licensed Paralegal Practitioner who is in good standing may represent the interests of a natural
24 person who is not represented by a lawyer unaffiliated with the Licensed Paralegal Practitioner
25 by:

26 (c)(1)(B) establishing a contractual relationship with the client;

27 (c)(1)(C) interviewing the client to understand the client’s objectives and obtaining facts relevant
28 to achieving that objective;

- 29 (c)(1)(D) completing an approved form;
- 30 (c)(1)(E) informing, counseling, advising, and assisting in determining which form to use and
31 giving advice on how to complete the form;
- 32 (c)(1)(F) signing, filing, and completing service of the form;
- 33 (c)(1)(G) obtaining, explaining, and filing any document needed to support the form;
- 34 (c)(1)(H) reviewing documents of another party and explaining them;
- 35 (c)(1)(I) informing, counseling, assisting and advocating for a client in mediated negotiations;
- 36 (c)(1)(J) filling in, signing, filing and completing service of a written settlement agreement form
37 in conformity with the negotiated agreement;
- 38 (c)(1)(K) communicating with another party or the party's representative regarding the relevant
39 form and matters reasonably related thereto; and
- 40 (c)(1)(L) explaining a court order that affects the client's rights and obligations.
- 41 (d) Other Exceptions and Exclusions. Whether or not it constitutes the practice of law, the
42 following activity by a non-lawyer, who is not otherwise claiming to be a lawyer or to be able to
43 practice law, is permitted:
- 44 (d)(1) Making legal forms available to the general public, whether by sale or otherwise, or
45 publishing legal self-help information by print or electronic media.
- 46 (d)(2) Providing general legal information, opinions or recommendations about possible legal
47 rights, remedies, defenses, procedures, options or strategies, but not specific advice related to
48 another person's facts or circumstances.
- 49 (d)(3) Providing clerical assistance to another to complete a form provided by a municipal, state,
50 or federal court located in the State of Utah when no fee is charged to do so.
- 51 (d)(4) When expressly permitted by the court after having found it clearly to be in the best
52 interests of the child or ward, assisting one's minor child or ward in a juvenile court proceeding.
- 53 (d)(5) Representing a party in small claims court as permitted by Rule of Small Claims
54 Procedure 13.

55 (d)(6) Representing without compensation a natural person or representing a legal entity as an
56 employee representative of that entity in an arbitration proceeding, where the amount in
57 controversy does not exceed the jurisdictional limit of the small claims court set by the Utah
58 Legislature.

59 (d)(7) Representing a party in any mediation proceeding.

60 (d)(8) Acting as a representative before administrative tribunals or agencies as authorized by
61 tribunal or agency rule or practice.

62 (d)(9) Serving in a neutral capacity as a mediator, arbitrator or conciliator.

63 (d)(10) Participating in labor negotiations, arbitrations or conciliations arising under collective
64 bargaining rights or agreements or as otherwise allowed by law.

65 (d)(11) Lobbying governmental bodies as an agent or representative of others.

66 (d)(12) Advising or preparing documents for others in the following described circumstances and
67 by the following described persons:

68 (d)(12)(A) a real estate agent or broker licensed by the state of Utah may complete State-
69 approved forms including sales and associated contracts directly related to the sale of real estate
70 and personal property for their customers.

71 (d)(12)(B) an abstractor or title insurance agent licensed by the state of Utah may issue real
72 estate title opinions and title reports and prepare deeds for customers.

73 (d)(12)(C) financial institutions and securities brokers and dealers licensed by Utah may inform
74 customers with respect to their options for titles of securities, bank accounts, annuities and other
75 investments.

76 (d)(12)(D) insurance companies and agents licensed by the state of Utah may recommend
77 coverage, inform customers with respect to their options for titling of ownership of insurance and
78 annuity contracts, the naming of beneficiaries, and the adjustment of claims under the company's
79 insurance coverage outside of litigation.

80 (d)(12)(E) health care providers may provide clerical assistance to patients in completing and
81 executing durable powers of attorney for health care and natural death declarations when no fee
82 is charged to do so.

83 (d)(12)(F) Certified Public Accountants, enrolled IRS agents, public accountants, public
84 bookkeepers, and tax preparers may prepare tax returns.

Advisory Committee Note

Subsection (a).

"Active" in this paragraph refers to the formal status of a lawyer, as determined by the Bar. Among other things, an active lawyer must comply with the Bar's requirements for continuing legal education.

Subsection (b).

The practice of law defined in Subparagraph (b)(1) includes: giving advice or counsel to another person as to that person's legal rights or responsibilities with respect to that person's facts and circumstances; selecting, drafting or completing legal documents that affect the legal rights or responsibilities of another person; representing another person before an adjudicative, legislative or executive body, including the preparation or filing of documents and conducting discovery; negotiating legal rights or responsibilities on behalf of another person.

Because representing oneself does not involve another person, it is not technically the "practice of law." Thus, any natural person may represent oneself as an individual in any legal context. To the same effect is Article 1, Rule 14-111 Integration and Management: "Nothing in this article shall prohibit a person who is unlicensed as an attorney at law or a foreign legal consultant from personally representing that person's own interests in a cause to which the person is a party in his or her own right and not as assignee."

Similarly, an employee of a business entity is not engaged in "the representation of the interest of another person" when activities involving the law are a part of the employee's duties solely in connection with the internal business operations of the entity and do not involve providing legal advice to another person. Further, a person acting in an official capacity as an employee of a government agency that has administrative authority to determine the rights of persons under the law is also not representing the interests of another person.

As defined in subparagraph (b)(2), "the law" is a comprehensive term that includes not only the black-letter law set forth in constitutions, treaties, statutes, ordinances, administrative and court rules and regulations, and similar enactments of governmental authorities, but the entire fabric of its development, enforcement, application and interpretation.

Laws duly enacted by the electorate by initiative and referendum under constitutional authority would be included under subparagraph (b)(2)(A).

Subparagraph (b)(2)(B) is intended to incorporate the breadth of decisional law, as well as the background, such as committee hearings, floor discussions and other legislative history, that often accompanies the written law of legislatures and other law- and rule-making bodies. Reference to adjudicative bodies in this subparagraph includes courts and similar tribunals, arbitrators, administrative agencies and other bodies that render judgments or opinions involving a person's interests.

Subsection (c).

The exceptions for Licensed Paralegal Practitioners arise from the November 18, 2015 Report and Recommendation of the Utah Supreme Court Task Force to Examine Limited Legal Licensing. The Task Force was created to make recommendations to address the large number of

litigants who are self represented or forego access to the Utah judicial system because of the high cost of retaining a lawyer. The Task Force recommended that the Utah Supreme Court exercise its constitutional authority to govern the practice of law to create a subset of discreet legal services in the practice areas of: (1) temporary separation, divorce, parentage, cohabitant abuse, civil stalking, custody and support, and name change; (2) forcible entry and detainer; and (3) debt collection matters in which the dollar amount in issue does not exceed the statutory limit for small claims cases. The Task Force determined that these three practice areas have the highest number of unrepresented litigants in need of low cost legal assistance. Based on the Task Force's recommendations, the Utah Supreme Court authorized Licensed Paralegal Practitioners to provide limited legal services as prescribed in this Rule and in accordance with the Supreme Court Rules of Professional Practice.

Subsection (d).

To the extent not already addressed by the requirement that the practice of law involves the representation of others, subparagraph (d)(2) permits the direct and indirect dissemination of legal information in an educational context, such as legal teaching and lectures.

Subparagraph (d)(3) permits assistance provided by employees of the courts and legal-aid and similar organizations that do not charge for providing these services.

Subparagraph (d)(7) applies only to the procedures directly related to parties' involvement before a neutral third-party mediator; it does not extend to any related judicial proceedings unless otherwise provided for under this rule (e.g., under subparagraph (d)(5)).

Effective 5/10/2016

78B-6-801 Definitions.

- (1) "Commercial tenant" means any tenant who may be a body politic and corporate, partnership, association, or company.
- (2) "Forcible detainer" means:
 - (a) holding and keeping by force, or by menaces and threats of violence, the possession of any real property, whether acquired peaceably or otherwise; or
 - (b) unlawfully entering real property during the absence of the occupants or at night, and, after demand is made for the surrender of the property, refusing for a period of three days to surrender the property to the former occupant.
- (3) "Forcible entry" means:
 - (a) entering any real property by:
 - (i) breaking open doors, windows, or other parts of a house;
 - (ii) fraud, intimidation, or stealth; or
 - (iii) any kind of violence or circumstances of terror; or
 - (b) after entering peaceably upon real property, turning out by force, threats, or menacing conduct the party in actual possession.
- (4) "Occupant of real property" means one who within five days preceding an unlawful entry was in the peaceable and undisturbed possession of the property.
- (5) "Owner":
 - (a) means the actual owner of the premises;
 - (b) has the same meaning as landlord under common law and the statutes of this state; and
 - (c) includes the owner's designated agent or successor to the estate.
- (6)
 - (a) "Peaceable possession" means having a legal right to possession.
 - (b) "Peaceable possession" does not include:
 - (i) the occupation of premises by a trespasser; or
 - (ii) continuing to occupy real property after being served with an order of restitution issued by a court of competent jurisdiction .
- (7)
 - (a) "Tenant" means any natural person and any individual, including a commercial tenant.
 - (b) "Tenant" does not include a person or entity that has no legal right to the premises.
- (8) "Trespasser" means a person or entity that occupies real property but never had possessory rights in the premises.
- (9) "Unlawful detainer" means unlawfully remaining in possession of property after receiving a notice to quit, served as required by this chapter, and failing to comply with that notice.
- (10) "Willful exclusion" means preventing the tenant from entering into the premises with intent to deprive the tenant of entry.

Amended by Chapter 264, 2016 General Session